

## Remarks

### For the Specification:

Applicant amends the specification to correct minor typographical and/or grammatical errors, to correct inconsistencies and/or lack of correspondence between reference numerals used in the specification and those used for different elements, and to further clarify the specification. These amendments add no new subject matter.

### For the Claims:

Applicant originally submitted claims 1-7. A first Office Action, dated 10 October 2005, rejected all claims. A first Amendment, dated 21 December 2005, canceled claims 1-7 and added new claims 8-14. In addition, a Supplemental Amendment, dated 26 January 2006, further added new claims 15 and 16. Accordingly, claims 8-16 are pending. This Final Office Action rejects claims 8-16. Applicant cancels claim 15, amends claims 8-13 and 16, and retains claim 14 as previously submitted. Applicant respectfully requests reconsideration in view of the modifications to the claims and the following remarks.

This Office Action rejects claims 8-16 under 35 U.S.C. 112, second paragraph, as being indefinite. In particular, the Office Action asserts that recitation of the phrase "to obtaining credit approval by a builder" (found in claim 8) is unclear. The Office Action further asserts that recitation of the phrase "and the like" (found in claims 8 and 12) is open-ended and indefinite. The Office Action also asserts that recitation of the phrases "determination of approval of construction loan" and "after

request for payment" (both found in claim 8) each lack an article.

Claims 8-13 and 16 are being amended to more clearly point out and distinctly claim that which Applicant believes to be the invention. In particular, the phrase "obtaining credit approval by a builder from the desired lender" has been amended to recite "the desired lender determining approval for the one builder to obtain credit from the desired lender." In addition, the phrase "and the like" has been deleted from the claims, and the allegedly missing articles have been added to the claims. Additional modifications to the claims were made to clarify claims, to provide proper antecedent basis for certain terms used in the claims, and to correct other indefinite terminology within the claims. Applicant believes the modifications to claims 8-13 and 16 overcome the rejection of those claims under 35 U.S.C. 112, second paragraph. As such, Applicant respectfully requests withdrawal of the rejection of claims 8-16 under 35 U.S.C. 112, second paragraph.

This Office Action rejects claims 8-15 under 35 U.S.C. 103(a) as being unpatentable over Ingram et al., U.S. Patent Publication No. 2002/0077967 (hereinafter Ingram) in view of Project Management: A Systems Approach To Planning, Scheduling, And Controlling, by Harold Kerzner (hereinafter Project Management).

This Amendment cancels claim 15. Therefore, claim 15 is no longer under consideration and the rejection of claim 15 is moot.

Regarding independent claim 8, the Office Action alleges that Ingram discloses the invention substantially as claimed with the exception being that Ingram does not specifically disclose a budget for each sub-contractor and supplier and calculating a difference between the budget and an actual cost for each sub-

contractor and supplier. The Office Action further alleges that Project Management discloses these limitations, and concludes that it would have been obvious to modify Ingram to utilize the budget/variance features of Project Management because this would allow responsible authorities to take action to correct problems within an original budget and bring a construction project back within acceptable financial tolerances.

Independent claim 8 is being modified to clarify Applicant's invention. A clean copy of independent claim 8, as amended, is presented below for the Examiner's convenience:

8. (Currently Amended) A method for the application and payment of construction loans between lenders and builders comprising:

- establishing a loan website on a host server;
- allowing one of the builders to select from the loan website a desired lender from a list of the lenders, the desired lender determining approval for the one builder to obtain credit from the desired lender;
- upon determination of approval, entering and submitting information related to a construction project from the one builder to the desired lender via the loan website;
- determining approval of a construction loan for the construction project upon receipt of the information, the determining operation being performed by the desired lender;
- following approval of the construction loan, submitting a request for payment from the one builder to the desired lender via the website; and
- transferring monetary funds from the desired lender to the builder after the request for payment is approved.

Claim 8 was amended to remove the formerly recited limitations regarding "entering additional construction information if the construction loan is approved, the construction information comprising a list of sub-contractors, suppliers, contract labor, and the like, and a budget for each sub-contractor, supplier, contract labor, and the like" and "calculating a difference between the budget and an actual cost

for each sub-contractor, supplier, contractor labor, and the like." Consequently, a rejection of claim 8 in view of a combination of Ingram and Project Management is moot. The remaining issue, therefore, is whether Ingram anticipates or renders obvious Applicant's invention of amended independent claim 8. Applicant respectfully asserts that Ingram does not.

The Final Office Action cites paragraph [0025] in the Ingram reference as a teaching of Applicant's feature of claim 8 of "selecting a desired lender from a list of lenders to obtain credit approval of a builder from the desired lender." Ingram teaches at paragraph [0025] of an automated system for providing construction financing that includes a system administrator, a builder, a dealer, and a lender. The system administrator maintains control over various aspects of the system. The system further includes a funding account that is controlled by the administrative unit (system administrator) and is supplied with funds provided by one or more lenders. The funding account is controllably accessible by dealers, builders, and possibly by subcontractors under the builders.

The selecting operation of previously presented claim 8 now recites in amended independent claim 8 "allowing one of the builders to select from the loan website a desired lender from a list of the lenders, the desired lender determining approval for the one builder to obtain credit from the desired lender." Support for this modification to claim 8 can be found in Applicant's specification at page 6, line 16, through page 7, line 17, and in Figures 1-3.

Ingram utterly fails to teach of allowing one of the builders to select from the loan website a desired lender from a list of lenders. Rather, Ingram merely mentions that the automated system includes a lender, and fails to indicate as to how any

particular lender or lenders is somehow affiliated with the system. In addition, Ingram fails to teach of a direct relationship between a builder and a desired lender selected by the builder. Nor does Ingram teach of a desired lender determining approval for the one builder to obtain credit from the desired lender. Rather, it is the administrative unit (system administrator) that determines such approval, i.e., builder certification at paragraph [0013]. As stated in W.L. Gore & Associates v. Garlock Inc., 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984):

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.

Ingram fails to anticipate Applicant's invention of amended independent claim 8 because Ingram does not disclose each element of claim 8. That is, Ingram fails to disclose allowing one of the builders to select from the loan website a desired lender from a list of the lenders, the desired lender determining approval for the one builder to obtain credit from the desired lender.

Nor is the above discussed "allowing" feature obvious in view of the Ingram reference. Well-established patent practice dictates that when a reference suggests that the direction taken by the Applicant would produce unacceptable results, such prior art cannot render obvious Applicant's invention. As stated in In re Buehler, 515 F.2d 1134, 185 U.S. P.Q. 781, 786, 787 (C.C.P.A. 1975):

The claimed method involves doing what the reference tries to avoid. The prior art strongly suggests that such a method would produce unacceptable results. This is the very antithesis of obviousness.

Correspondingly, modification of a prior art device that would render that device unworkable for its intended purposes is strong grounds for finding the claims to be allowable. As stated in National Tractor Pullers Assn., Inc. v. Watkins, 205 USPQ 892 at 911 (ND ILL, March, 1980):

A modification of a prior art patent or device which would render that device unworkable for its intended purposes cannot be said to suggest such a modification.  
(emphasis supplied)

Accordingly, the proper evaluation for determining patentability is to consider whether the prior art suggests the desirability of modifications which make the prior art device more closely resemble Applicant's invention of claim 8. This suggestion must be found in the prior art and not Applicant's specification. Moreover, a modification that would render a device unworkable for its intended purposes provides strong evidence supporting a failure to suggest such a modification.

Applicant's invention of claim 8 enables a direct relationship between the builder and the lender via the loan website by allowing the builder to select a desired lender from a list of lenders, and the desired lender determining approval for the builder to receive credit from the desired lender. This enables the builder to select who he or she wishes to deal with. By allowing the builder to select who he or she wishes to deal with, the builder can, for example, apply with a lender who may have the best available rate.

Ingram strongly suggests that this direct relationship between the borrower and the lender produces unacceptable results. In particular, Ingram teaches that construction financing has typically been provided in many instances by traditional banking institutions (lenders) that cater to the

financial needs of multiple entities (paragraph [0004]). Such institutions (lenders) often have not given proper prioritization to loans specific to construction needs. Loan officers with expertise in local markets and businesses are often transferred or discharged to meet the changes of a dynamic marketplace. Thus, Ingram believes traditional sources for construction financing via a direct relationship between a borrower and a lender cannot adequately serve the loan administration needs of the builder/borrower.

A purpose of the Ingram system is to remove the borrower and lender from a direct relationship by utilizing an administrative unit (system administrator) that administers the construction loan, obtains money and disburses it to a borrower or other third party. Among other functions, it is the administrative unit (system administrator) that determines approval for the one builder to obtain credit. In particular, the system administrator performs an underwriting process to determine builder certification (i.e., determine approval for the builder to obtain credit/a construction loan) by analyzing operating history and credit history of the builder [0050]. Consequently, the Ingram system circumvents a direct relationship between the borrower and lender, and the suggested unacceptable results of such a relationship.

If Ingram was modified to more closely resemble Applicant's invention of claim 8, such that the desired lender determines approval for the builder to obtain credit, Ingram would no longer work for its intended purpose. Namely, Ingram would no longer work for its intended purpose of utilizing an administrative unit (system administrator) to automatically control the business arrangements and financing [0015] so that, as strongly suggested by Ingram, a less knowledgeable, less efficient, and lower level of service traditional banking institution need not be involved.

Since Ingram would be rendered unworkable for its intended purpose, Ingram cannot suggest the desirability of modifications which make the prior art device more closely resemble Applicant's invention of claim 8. Moreover, one skilled in the art would not be motivated to make the changes required of Ingram to more closely resemble Applicant's claimed invention without first having read Applicant's specification. Rather, it is only Applicant's specification which teaches doing that which Applicant claims.

It should also be emphasized that it is not proper to view the Ingram administrative unit (system administrator) as being a lender in an attempt to deprecate Applicant's invention. As stated in Ingersoll-Rand Co. v. Brunner & Lay, Inc., 1177 USPQ 112, 116 (5<sup>th</sup> Cir. 1973):

Moreover, it is not realistic to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art (emphasis supplied).

Ingram clearly teaches of a lender 26 that supplies monetary funding for a loan to a funding account 32 managed by the administrative unit (system administrator) 20. When the teachings of Ingram are fully considered, it is evident that Ingram teaches of a lender distinct from the administrative unit (system administrator), with the administrative unit actually administering the construction loan. It is improper to disregard this teaching of both an administrative unit (system administrator) and a lender distinct from the administrative unit (system administrator) in an attempt to deprecate Applicant's invention as recited in claim 8. Such impropriety would amount



to a mischaracterization of what Ingram fully and fairly teaches or suggests.

Ingram suggests that the method taught by Applicant would yield unacceptable results. In addition, a modification to Ingram to something more closely resembling Applicant's invention would render Ingram unworkable for its intended purpose. Moreover, a mischaracterization of what the prior art fully and fairly teaches or suggests is improper and impermissible. Consequently, a proper obviousness evaluation indicates that Applicant's invention of claim 8 is neither taught nor suggested by the prior art. Such things which Applicant claims and which are not taught or suggested by the prior art provide strong grounds for allowance of the claims.

In further regard of independent claim 8, the Final Office Action cites paragraph [0049] in the Ingram reference as a teaching of Applicant's feature recited in previously presented claim 8 of "entering and submitting electronically information related to the construction project to the desired lender." The Final Office Action further cites paragraph [0048], Fig. 3c, element 58, and Fig. 11 as a teaching of Applicant's feature recited in previously presented claim 8 of "determination of approval of a construction loan by the desired lender."

The entering and submitting operation of previously presented claim 8 now recites in amended independent claim 8 "upon determination of approval, entering and submitting information related to a construction project from the one builder to the desired lender via the loan website." Support for this modification to claim 8 can be found in Applicant's specification at page 7, line 18, through page 8, line 15. The determination operation of previously presented claim 8 now recites in amended independent claim 8 "determining approval of a construction loan

for the construction project upon receipt of the information, the determining operation being performed by the desired lender." Support for this modification to claim 8 can be found in Applicant's specification at page 10, lines 8-13.

The modifications to amended independent claim 8 further emphasize the direct loan relationship between the lender and the borrower via the electronic submission mechanisms of Applicant's invention to affect a direct construction loan from the lender to the builder. Again this direct loan approach is neither taught nor suggested by Ingram for the reasons set forth above.

The Final Office Action further cites paragraph [0049] as a teaching of Applicant's features recited in previously presented claim 8 of "submitting a request for payment" and "transferring monetary funds after request for payment is submitted and approved." The "submitting" and "transferring" operations of previously presented claim 8 now recite in amended independent claim 8 "following approval of the construction loan, submitting a request for payment from the one builder to the desired lender via the website" and "transferring monetary funds from the desired lender to the builder after the request for payment is approved."

Again, the modifications to amended independent claim 8 further emphasize the direct loan relationship between the lender and the borrower via the electronic submission mechanisms of Applicant's invention to facilitate requests for payment and transference of payments between the builder and the lender. Again, this direct loan approach is neither taught nor suggested by Ingram for the reasons discussed above.

For the reasons set forth above, Applicant believes that amended independent claim 8 is neither taught nor suggested by

the prior art. Thus, Applicant respectfully requests the withdrawal of the rejection of claim 8. Claims 9-14 and 16 depend from claim 8 and are believed allowable for the reasons set forth in connection with claim 8. In addition, claim 9-14 are allowable for independent reasons.

Claim 10 was amended to include the further limitation of sending a user name and a password from the desired lender to the one builder upon determination of approval, the user name and password enabling the one builder to enter and submit electronically the information related to the construction project to the desired lender via the loan website. In keeping with the invention of claim 8, from which claims 10 depends, claim 10 was amended to more clearly point out that it is the lender and not some other entity, such as the Ingram system administrator, that provides the appropriate authorization for the builder to enter into an electronic transfer of information between the builder and the lender. In doing so, the time consuming, redundant, and costly exchange of information between the builder and the lender is significantly reduced. Such methodology provides leverage for the lender to gain borrowers in a crowded financial lending marketplace. Thus, Applicant believes the invention of claim 10 is neither taught nor suggested by Ingram.

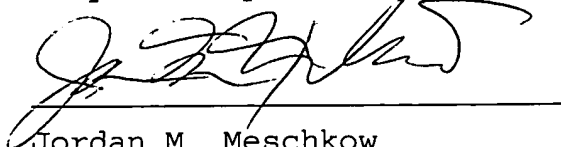
Like claim 10, dependent claims 9 and 11-13 were also amended to more clearly point out that it is the lender and not some other entity, such as the Ingram system administrator, with whom the builder establishes a direct construction loan administrative relationship. Thus, the features of claims 9 and 11-13 are neither taught nor suggested by Ingram for the reasons set forth above.

This Final Office Action rejected claim 16 under 35 U.S.C. §103(a) as being unpatentable over Ingram in view of Project Management and further in view of Pacifica South Bancorp Construction Lending (hereinafter Pacifica). In particular, the Office Action alleges that Pacifica discloses the concepts of contractor lien and affidavits from subcontractors, and concludes that it would have obvious to modify Ingram to include such liens and affidavits to facilitate completion of financing processes for a construction project. Claim 16 depends from amended independent claim 8. Thus, claim 16 is believed allowable for the reasons set forth above.

Accordingly, this Amendment cancels claim 15, and amends claims 9-13 and 16. Currently amended claims 9-13 and 16 remain in the application and are believed to be allowable. In addition, claim 14 remains in the application as previously submitted and is believed to be allowable.

Applicant believes that the foregoing amendments and remarks are fully responsive to the rejections and/or objections recited in the 13 April 2006 Office Action and that the present application is now in a condition for allowance. Accordingly, reconsideration of the present application is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jordan M. Meschkow', written over a horizontal line.

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